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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person of  
ELAINE R.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Petitioner and Respondent,

v.

ELAINE R.,

Objector and Appellant.

D055193

(Super. Ct. No. MH103644)

APPEAL from a judgment of the Superior Court of San Diego County, Frederick  
Maguire, Judge. Reversed.

Elaine R. appeals the judgment establishing a conservatorship of her person under the Lanterman-Petris-Short Act (LPS Act) (Welf. & Inst. Code,<sup>1</sup> § 5000 et seq. We reverse.

## BACKGROUND

Elaine has a long history of psychiatric illness, psychiatric hospitalizations, and conservatorships. On March 2, 2009, she was admitted to a psychiatric hospital for the sixth time since the beginning of the year. An investigator for respondent, the San Diego County Health and Human Services Agency, through the Office of the Public Conservator (the public conservator) met with Elaine on March 10. Elaine acknowledged she had bipolar disorder and schizophrenia, believed she needed medications, and was willing to return to a skilled nursing facility and accept assistance from her case manager. On March 16 the court appointed a temporary conservator. Elaine was released to a skilled nursing facility on March 17 but was readmitted to the hospital 24 hours later. A similar release and readmission took place from March 23 to March 26.

A conservatorship hearing was set for April 14, 2009.<sup>2</sup> Elaine's appointed counsel met with Elaine and filed an Advisal To Proposed Conservatee. In the Advisal, counsel declared that she had explained or attempted to explain to Elaine the nature and purpose of the proceeding, the consequences of the establishment of a conservatorship, and

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The record does not include a copy of the conservatorship petition. Neither party mentions this omission.

Elaine's rights. On April 14 the court found Elaine's presence was waived based on counsel's representations. The court continued the matter to May 7.

Elaine was not present at the May 7, 2009 hearing. Her attorney stated she met with Elaine on April 10 and Elaine "had little comprehension about what was going on." Counsel "explain[ed] in a basic sense what a conservatorship was, and [Elaine] voiced no objection to . . . a conservatorship." When counsel explained "that [Elaine] would be in the closed, locked facility, perhaps a board and care when she got better[, Elaine] seemed to understand that concept." Counsel explained to Elaine that she "would go to court and make this appearance on her behalf and . . . [Elaine] had no objection to that as well, and she said, okay." Counsel believed Elaine "would probably not recall" their meeting because Elaine had no recollection of her meeting with the investigator. Counsel stated, "Then, later on, the date that was scheduled for [Elaine] to appear in court, she actually came to court. She told the hospital staff that she wanted to be there. [¶] I talked to her about that. She said she wanted a hearing. We continued it at that point."<sup>3</sup> Later, a social worker told counsel that Elaine had told the social worker that Elaine "was not contesting the conservatorship" and "there was no need for a jury trial today." Counsel noted that Elaine "actually is here at 10:00" for an electroconvulsive treatment hearing<sup>4</sup>

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<sup>3</sup> This appears to be a reference to the April 14 hearing, although the record does not show that Elaine was present in court on that date.

<sup>4</sup> This is a reference to a May 7 evidentiary hearing to determine Elaine's capacity to give written informed consent to electroconvulsive treatment (§ 5326.7, subd. (f)). The minute order of that hearing shows that it began at 8:45 a.m. but does not show that

and counsel did not "know if [Elaine] will believe she is here for [a] conservatorship [hearing] or not." Counsel concluded that she was waiving Elaine's presence and the matter was uncontested.

Based on counsel's representations, the court found Elaine's presence was waived. The court established a conservatorship and appointed the public conservator.

### THE APPEAL

Elaine contends she was deprived of due process because there was not an adequate foundation for a knowing and intelligent waiver of her right to be present at trial or for her consent to the conservatorship. Without conceding that Elaine suffered any actual prejudice, the public conservator asks this court to remand the case to the trial court forthwith, in the interest of justice, with directions to set a hearing to allow Elaine to contest the conservatorship.

A similar issue to Elaine's is pending before the California Supreme Court in *Conservatorship of John L.*, review granted August 31, 2007, S157151. In light of that fact, as well as the trial court proceedings here, we believe that the interests of justice dictate that we reverse the judgment. Whether a new conservatorship hearing should be set will, of course, depend on the circumstances that exist when the remittitur issues.

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Elaine was present. The minute order of the May 7 conservatorship hearing shows that it also began at 8:45 a.m., while the reporter's transcript show that it began at 9:55 a.m.

DISPOSITION

The judgment is reversed.

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O'ROURKE, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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NARES, J.